

EVALUATION THE INDEPENDENCE OF THE IRAQI SUPREME AUDIT INSTITUTION IN THE POST- SADDAM ERA

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Abstract- The main purpose of the study is to assess the extent to which the Iraqi Supreme audit institution (SAI) independence in the context of legal and constitutional frame after 2003. This paper discusses and analyzes the implications of the nature of this independence on accountability in the Iraq public sector. Based on the reviews, criticisms and theoretical and legal analysis, the study confirms that the SAI independence is an important concept for any country, particularly democracy ones. The study finds that despite the independence of the Iraqi Supreme Audit Institution is considered as one of the basic issues that were included in the legal and constitutional frame in the post - Saddam Era, nevertheless the application of these texts were accompanied by many constraints and challenges which have contributed to the loss of the independence content, and then influenced on the Iraqi SAI performance in enhancing accountability and detect corruption in the public sector.

Keywords- Independence, SAI, Iraq, Public Sector Accountability, Corruption.

I. INTRODUCTION

It is widely accepted that the Supreme audit institutions (SAIs) are national-level watchdog agencies responsible for the audit of government revenue and expenditure (Nagy, 2012). The main objectives of SAIs are usually involving to promote the proper and effective use of public funds; the development of sound financial management; the proper execution of administrative activities; and the communication of information to public authorities and the general public through the publication of objective reports (Borge, 2001). In addition, many countries nowadays have resorted to strengthen the role of SAIs in order to ensure the success of any plan to combat corruption in the public sector (Evans, 2008).

However, the SAIs role in ensure transparency, accountability and fighting corruption in the public sector, should be synchronized with a set of principles that would enhance its role. The independence of supreme audit institutions is one of the basic principles which should underlie the functioning of these institutions (Dye, & Stapenhurst, 1998). This principle indicates that the SAIs should not be subject to the influence of public authorities, in particular the executive authority which exercises most of the administrative and financial activities within the state. As well, the staffs of the supreme audit institutions should do their work on an independently of the influence of persons or institutions that subject to control (Wynne, 2010: 57). In this regard, International Organization of Supreme Audit Institutions (INTOSAI) has produced two essential documents which define what is meant by SAIs independent. The first, agreed in 1977 and known as the "Lima Declaration" determines the principle of independence of government auditing.

The second known as the "Mexico Declaration" which was agreed in 2007 and defines these requirements in more concrete terms identifying eight pillars underpinning the independence of SAIs.¹ Given the importance of these two documents, the United Nations has also adopted a resolution confirming the importance of ensuring the independence of SAIs. On 22 December 2011 the 66th United Nations General Assembly adopted the Resolution "Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening the independence of supreme audit institutions (UN Resolution A/66/209).

In the Iraqi context, the independence of the Iraqi Supreme Audit Institution is considered as one of the basic issues that were included in the legal and constitutional frame after 2003. The change in the political system after the Saddam Hussain era led to a change in the features of building the constitutional institutions, including the Supreme Audit Institution (Jawad, 2013). In fact, adopting a parliamentary system, democratic ideas and the principle of separation of powers are all factors contributed to having, at least, a clear item in the law and constitution that assures the independence of the Iraqi SAI. However, there is a need to assess the extent of the application of the Iraqi SAI independence and its impact on its performance in the protection of public funds and the detect corruption in the public sector. This is because that Iraq after 2003 is witnessing a weakness in financial management, waste of public resources and public funds as well as, the spread of corruption in all government institutions without

¹INTOSAI. The Lima and Mexico Declarations of the Independence of SAIs. For more information, visit <http://www.intosai.org/issai-executive-summaries>.

exception (Tas, 2012: 462). To achieve the requirements of assessing the Iraqi SAI independence, this study adopted a qualitative approach, and based on a single embedded case study approach involving multiple methods of data collection including public documents, semi-structured interviews. This methodology is chosen because the issues arising in this research are legally rooted and will be best resolved by reviews, criticisms and theoretical analysis and the application of statutes, instruments, conventions, treaties and practices that established the legal principles of the SAI's independence.

II. KEY FEATURES OF THE SAIS INDEPENDENCE

There is no doubt that the importance of the independence of the SAIs and its association with the principles of democracy and the rule of law, should be embodied through the presence of clear legal framework ensures this independence. Hence, the main features of the SAIs independence have identified through three basic legal elements. These elements are:

First: the organizational independence, which refers to that the establishment of SAIs and the necessary degree of their independence should be stipulated down in the constitution; details may be set out in legislation. Other words, Organizational independence has to do with the formal position of the SAI within the organizational framework and the institutional arrangements in place to insulate it from outside influence. As such, it deals with issues relating to the constitutional/statutory guarantees of independence in relation to the legislative and executive branches of government (INTOSAI, Lima Declaration). This matter involves on two important points: the first relating to that constitution or the law should be explicitly specifying subordination of SAIs for public authorities in the state. In this regard, due of the executive branch's activities are targeted in the control, the SAI's subordinate should be associated to parliament or the judiciary. If the executive branch of government were in a position to exercise unrestrained influence over an SAI, especially upon its management and governing body, this would be equivalent to the government's primacy over the SAI (Gendron, & Cooper and Townley, 2001). Second point relates to the need to ensure the independence of the president and members of the Supreme Audit Institutions. According to the Lima Declaration that the independence not only of the SAIs themselves, but also of their members, stating that the independence of SAIs is inseparably linked to the independence of their members. In the Declaration, "members" are defined as those persons who have to make the decisions for the SAI and are answerable for these decisions regarding the exercise

of the task of oversight of government activities. The independence of SAI's heads and members, should be included security of tenure and legal immunity in the normal discharge of their duties (INTOSAI, Lima Declaration).

The demand for independence the head of SAI should also be accompanied of the SAI's exclusive sovereignty in matters of human resources, including the appointment of staff. The Lima Declaration rightly assumes that the independence of an SAI's staff guarantees the independence of the SAI as a whole. If the government or any other audited body were in a position to give instructions to SAI members or influence them in any other way, this would diminish the authority of the SAI, impair its impartiality, cast doubts upon the objectivity of its oversight tasks, and undermine the independence of the entire SAI, regardless of the existence of a legal or even a constitutional commitment to SAI independence (Van Zyl & Ramkumar, 2009). Thus, any government involvement in such matters would be equivalent to its indirectly influencing the oversight activity of the SAIs in strengthen the accountability of the government and fighting corruption. To achieve this end, the appointments promotions and the dismissals of auditors and, above all, disciplinary measures taken against them must therefore be beyond the influence of the executive branch of government (Kayrak, 2008: 63).

Secondly: ensuring the financial independence of the SAIs, which indicates that the SAIs should have sufficient financial resources to enable them to fulfill its tasks efficiently without any influence by the executive. To meet the requirements of this independence, Lima Declaration indicates that SAIs financial independence should be clearly reflected by specifying the funds earmarked for them in the public budget under a special budget heading separate from those of state ministries. Moreover, it is necessary to focus that the SAI be entitled to use its allotted funds as it sees fit and to implement its budget without having to obtain the approval of the executive powers of the government (INTOSAI, Lima Declaration). Hence, to ensure high-quality work, SAIs need well-qualified, adequately remunerated staff who are encouraged to continuously improve, especially in their areas of expertise. For example, auditors could enhance their skills in fraud detection and information technology through a combination of training, education, and experience. This requires, that the Supreme Audit Institutions through its president (or Auditor General) should be empowered to prepare and organization an independent budget submitted to the legislature directly without interfering executive power to modify its content (Hegarty & Musonda, 2010). Accordingly, it is possible to note that the need for a legal guarantee financial independence of the SAIs is due to the reason that the

executive branch in most countries are preparing a draft public budget, the possibility of the government earmarking a very small amount for the SAI in a conscious effort to restrict its scope of action cannot be altogether excluded. Therefore, the legislature or one of its commissions should be responsible for ensuring that SAIs have the proper resources to fulfill their mandate (Dye, & Staphenurst, 1998).

Thirdly, ensuring the functional independence, which is no less important for the objective and effective performance of the SAIs tasks in ensuring public sector accountability. For such independence to be guaranteed, the SAI's oversight powers should be embodied in the constitution. Functional independence indicates that the SAIs should have the authority to access to all records and documents relating to financial management and administrative activities for all public sector institutions without exception (INTOSAI, Declarations of Lima & Mexico). In addition, the mandate of the SAIs regarding the implementation of the functions of control and audit must not be constrained by restrictions imposed from the executive branch. Within the legal framework governing its functions, the SAI must be free to set its own auditing priorities and apply the auditing methods and techniques it considers appropriate without being influenced by the government powers. Also, the SAI must enjoy complete freedom regarding the substance of its reports. Any attempt on the part of the government to influence the content of SAI reports or to suppress unfavorable audit results must be counteracted with determination in all circumstances (English, & Guthrie, 2000).

Ultimately, it is possible to note that the achieving the independence of the SAIs's reports requires submission of these reports to parliament or one of its commissions. This procedure will ensure the existence of effective follow-up mechanisms on SAI recommendations through the use of parliament powers to discuss the government's activities. Additionally, the publication of SAIs's reports, and make them available to the public, the media and civil society organizations, all contribute to strengthening the mechanisms of monitoring the implementation of those reports (Wang, & Rakner, 2005: 19).

III. LEGAL AND CONSTITUTIONAL REGULATION OF THE IRAQI SUPREME AUDIT INSTITUTION INDEPENDENCE

To begin with, one of the important features that the Iraqi legislations have witnessed after 2003 is the inclusion the principle of the SAI independence within the legal and constitutional texts. By contrast, during the Saddam Hussain Era, despite that the SAI law of 1968 stipulated of its independence, however, such independence denied by the provisions of the

Iraqi Repealed Constitution of 1970, when had clearly stated that the SAI is linked with the President of the Republic and the Council of the Revolutionary Command (RCC), which is also under the control of the president (Iraq's interim constitution of 1970).

Indeed, nature of the political system at that time was a presidential system. All legislative and executive authorities, even the judicial authority were all in the hand of the president through the RCC which is represented by Al-Baath Party. Al-Baath Party was the only party in power and the president was the supreme leader of the party, and has domination over all authorities. Thus, the independence of the Supreme Audit Institution was meaningless, especially with the absence of the political competition and political parties participating in authority. For this reason, the Supreme Audit Institution was categorized as part of the executive authority under the title of governmental institution that is not linked to a ministry (Al-Jeddah, 1998: 45). However, the political developments after 2003 resulted in radical change in the structure of the constitutional institutions. The Iraqi constitution of 2005 has stated clearly the legal mechanisms for the formation of the constitutional institutions (e.g. legislative, executive and judicial authorities). In addition, it has declared the creation of a group of independent Institutions, with emphasis on the independence of the Iraqi SAI. For example, Chapter IV of Part III of the Constitution came under the title 'Independent Commissions' and it included the following:

"The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law" (Constitution of the Republic of Iraq, 2005: Article 102). Also, Article 103 stipulated 'First: The Central Bank of Iraq, the Supreme Audit Institution, the Communication and Media Commission are financially and administratively independent institutions, and the work of each of these institutions shall be regulated by law'. 'Second: The Central Bank of Iraq is responsible before the Council of Representatives. The Supreme Audit Institution and the Communication and Media Commission shall be attached to the Council of Representatives'.

On the other hand, in line with the constitutional text, SAI law No 31 of 2011, included that the Iraqi SAI "... shall be a financially and administratively independent body with a judicial personality. It is the highest financial controlling body, which is attached to the Council of Representatives and represented by president of the institution or whom he may authorize" (Article 5 of the Iraqi SAI

Law). Accordingly, it can be noted that the above texts have clearly illustrated two important issues which are: First the Iraqi constitution has created independent organizations that did not exist before 2003. Second, it has emphasized the independence of the Supreme Audit Institution as a constitutional institution that assists the Iraqi Council of Representatives for the purpose of enhancing the accountability and questioning on the works of the government.

In this regard, the independence of institutions which have mentioned by the Iraqi constitution (e.g. the Supreme Audit Institution, the Integrity Commission, Commission of the Iraqi media, Commission of Human Rights, etc.) came as a necessity for the exercise of oversight functions by these bodies efficiently and objectively. Independent institutions are usually indicating a development in the concept of the work of oversight institutions on the activities of the public sector in states. The current development in the tasks of the state requires creation of specialized institutions that work on enhancing observation on the governmental activities for the purpose of protecting the principles of legality, the rule of law and the protection of citizens' rights. This perfectly applies to the independence of the Iraqi SAI which is considered an institution doing its task in observation on corruption and in the protection of public funds within a frame of cooperation with the Council of Representatives which seeks the same goal. Thus, the independence of the Iraqi SAI is ruled by the parliamentary system that currently exists according to the Iraqi constitution. Where, all the powers of the executive branch in setting public policy, public sector management, implementation of laws, and provision of basic services to citizens should be subject to the oversight of Parliament as a representative of the people. Therefore, for the legislative authority to be able to perform its supervisory task, it seeks support from the SAI as a neutral and independent institution (Zugheir, interview, 2015).

With respect to the relationship between the Iraqi SAI and parliament, the Article (28) of the Iraqi SAI of 2011 stipulates that "Within 120 days of the end of every year, the SAI through council of financial Audit shall present to the CoR an annual report of the basic aspects ensuing from the implementation results of the Board's annual plan, including the insights, observations and suggestions relevant to the financial, administrative, economic and legal circumstances. The report shall contain also evaluation of the efficiency and adequacy of the government procedures required to ensure effective and transparent collection of revenues and spending of public funds. Moreover, the Council may forward a report to the CoR on every important matter relating to the audit and evaluation of financial, administrative

and economic performance, and may disseminate, by consent of the CoR, any issue it deems necessary" (Iraqi SAI of 2011). Accordingly, it can be noticed that these reports help the legislative authority to view the real picture in which public funds of the state are administered and to identify cases of cheating and corruption. For the CoR to benefit from these reports, it sends them to the Integrity Committee and the financial committee in the parliament according to the procedures indicated in the work stipulated contexts in the internal rules of procedures of the CoR. These committees are specialized in following up on cases of administrative and financial corruption identified in these reports in the different institutions of the state. The Financial Committee is also specialized in following up on the affairs of the general state budget and the transfers among its exits and reviewing the financial policy of the different ministries and institutions in the state (Moussa, Interview, 2015).

Last but not least, the experience of democratic countries seems more obvious in strengthening the relationship between the SAI and parliamentary committees through the auditing reports. An example of this, most of commonwealth countries (e.g. UK, Australia, Canada, etc.), the auditor general is an essential element of parliamentary oversight. It reports directly to parliament and a specialized committee in parliament such as the Public Accounts Committee. This committee reviews audit findings, considers testimony by witnesses from government departments and sends its report to the full parliament (Dye, & Stapenhurst, 1998) and (Kellner, 2000: 172). From the above mentioned, it can be understood that the constitutional and legal indication of the independence of the Supreme Audit Institution does not refer to the establishment of a new institution different from the one that existed during the Saddam Hussain Regime. However, the existence of a constitutional frame for the independence of the Supreme Audit Institution in Iraq after 2003 has come to enhance the role of this institution in observation over the activities of the public sector being one of the main pillars in fighting corruption and in being a neutral institution that can contribute to the identification, detection and addressing of corruption in response to the constitutional development in the management of the institutions of the state and the relationship between the legislative and the executive authorities.

IV. ASSESSMENT THE CHALLENGES AND ISSUES RELATED TO THE INDEPENDENCE OF THE IRAQI SAI

As previously noted that the constitutional and legal texts on independence of the Iraqi SAI is considered as a significant feature of Iraqi legislation after 2003. However, the application of the content of

independence was associated with several constraints and legal problems that have contributed to loss of the real meaning of independence. These constraints and obstacles are discussed and analyzed below.

4.1. Obstructing the application of legal texts of independence by the executive branch

Although the principles contained in the Iraqi constitution of 2005, refer to that this oversight institution must be exercised its functions without interference from the executive branch, and this institution should be associated with the legislative branch, the application of these principles have not materialized in practice. During the rule of the Coalition Provisional Authority (CPA), the Iraqi SAI remained subject to the instructions and recommendations of the US civil governor (Paul Bremer)², and the Iraqi transitional government. This power has granted to the CPA according to the SAI's order of 2004, despite of the contradictory with other texts that prevent any interference in the SAI's tasks (The CPA Order No 71 of 2004). In this regard, during this period the CPA prevented the SAI of exercise its oversight functions only after obtaining a permit and approval of them. For example, audit the documents relating to the spending of Iraqi funds by the CPA were not available to the Supreme Audit Institution. The CPA was spending from the Development Fund for Iraq (DFI) that includes the Iraqi funds that were frozen during Saddam's regime. More than \$ 60 million spent during the years (2004-2006) by granting construction contracts and provide aid to Iraqi ministries, but without providing any documents about the amount of such funds to the SAI. Thus, the independence of the Supreme Audit Institution in Iraq has not respected as prescribed by law (Salman, Interview, 2015).

On the other hand, in 2006, when the election of the Council of Representatives (COR) and the formation the Iraqi government according to the 2005 Constitution, there is a dispute between the executive and the (COR) about the relationship of oversight institutions (e.g. the Supreme Audit Institution, Integrity Commission, Commission of Iraqi Media, etc.) with the constitutional authorities. The (COR) explained that the constitution is clear in identifying the subordination of both the Supreme Audit Institution, Integrity Commission and independent institutions to parliament. Therefore, these institutions should work with the parliamentary committees in order to enhance the control of the parliament on the performance of the executive authority. Nevertheless, the position of the Iraqi COR has objected by the Council of Ministers, who insisted that the independent oversight institutions,

including the Supreme Audit Institution, should be treated as a government institution.

The Cabinet, by Prime Minister Nuri al-Maliki³ demanded that the independent institutions including the SAI must be linked and subject to the supervision of the Council of Ministers, due they are considered an executive institution like the ministries and government institutions. In the meantime, the absence of a new law to regulate the SAI's tasks accordance with the constitution of 2005, and opposes the partisan interests of the Iraqi COR which accompanied by dominance of the Prime Minister's party "Dawa Party" led to the political consensus in subjection to the will of the prime minister in control of the oversight institutions (Faraj, 2012: 35).

In clarifying the main reason of the political consensus and subjection to the prime minister's will in control on the SAI and oversight institutions, it is noted that the weakness of the legal culture of the members of the of the Iraqi parliament led to give in to the demand of the Prime Minister even though violation of the legality principle and the rule of law. Failure to apply the constitutional provisions on the independence of the Iraqi SAI is a clear violation of the principle of the rule of law and to move away from application of so-called democracy in Iraq. Moreover, the giving priority to party interests in dealing with the law, reflected negatively on the performance of the Supreme Audit Institution in controlling the public sector institutions, because it is unacceptable logically that the SAI be as part of the executive arm of government (Moussa, Interview, 2015).

Based on the analysis of the aforementioned views, it is clear that the executive branch's position is built on a breach the application of legal texts in dealing with the Iraqi SAI's independence. Other factors have contributed to this situation, such as CPA Orders during their rule of Iraq, and the ambiguity of the legal texts that dealing with the concept of independence, as well as the weakness of the Iraqi COR's position to protect the independence of the Supreme Audit Institution.

4.2. Absence the legal guarantees of the Iraqi SAI organizational independence

The organizational independence of the SAIs must involve the need to ensure the independence of both the head of the supervisory institution and its employees from executive influence. However, such guarantees have not been applied on the Iraqi SAI. Ambiguities and breach the application of legal texts

² Lewis Paul Bremer III (born September 30, 1941) is an American diplomat. He is best known for leading the occupational authority of Iraq following the 2003 invasion by the United States. For more visit https://en.wikipedia.org/wiki/Paul_Bremer.

³ Nouri Kamil Mohammed Hasan al-Maliki; born 20 June 1950), is an Iraqi politician who was Prime Minister of Iraq from 2006 to 2014. He is secretary-general of the Islamic Dawa Party and a Vice President of Iraq from 2014 to 2015. For more, visit https://en.wikipedia.org/wiki/Nouri_al-Maliki.

relating to the SAI independence contributed to the absence of independence both the head of the Iraqi SAI and its staff. Despite the Iraqi constitution of 2005 is an explicitly noted of subordination the SAI to the COR, simultaneously, constitution gave the parliament the power of accountable and interrogate the president of SAI (Article: 61, Constitution of the Republic of Iraq, 2005). As well, the SAI's law pointed that the SAI's president is independent and may not serve in the cabinet in any capacity (Iraqi SAI Law of 2011, Article: 5). However, the procedures for the appointment and dismissal of SAI's President have remained under domination of the executive power. The above provisions have not been applied in practice because of the insistence of the Prime Minister and the Supreme Court's interpretation, in addition to the contradiction between the legal texts itself which did not explain these procedures in detail. Since 2004 until now, the appointment of the head of the SAI and procedure of his dismissal are based on a decision of the Prime Minister with a semi-formal approval from the COR. According to the Article (22 / first) of the Iraqi SAI law of 2011 which stipulates that " Based on a proposal from the council of ministers, the COR shall approve in majority the appointment of the President of the SAI ".

Thus, the executive branch dominance on the procedures of appointment and dismissal the head of the Supreme Audit Institution is considered one of main problems that have faced the Iraqi SAI's functions in the protection of public funds and overcome the corruption. Where, the head of the Iraqi SAI has often received the instructions by the government as part of the executive, and this contrasts with the nature of his works as head of the highest oversight institution in Iraq. Moreover, this situation does not comply with the principle of neutrality in the control of public sector institutions, where, if government members who dislike the findings of SAI can easily get rid from its president, this would be inimical to his independence and the effectiveness of his reports. Thus, many guidelines were issued from the head of SAI in application of the Cabinet instructions, excluded certain of administrative and financial activities, specifically, certain of government contracts from the audit. This situation has contributed to reducing the effectiveness of the SAI's performance due the executive usually behave in public money, and most forms of corruption relating to the exercise of their activities (al-Jurani, Interview, 2015).

With respect to the independence of the Iraqi SAI staff, ideally, it can be noted that the rules of procedure for the Iraqi SAI have stipulated that the selection of candidates for the oversight functions within the SAI should be based on the qualities of efficiency and specialization. Nevertheless, the SAI's

law does not provide any guarantees for this purpose, where the procedures of selection and appointment the Iraqi SAI's staff have not different from the mechanics of the appointment of government employees. According to the Article (37) of the Iraqi SAI law of 2011, the employees of the SAI shall be subject to provisions of the regulations in effect, except for any issue being provided for in this law (The Iraqi SAI Law of 2011). Therefore, the Iraqi SAI's staff do not have any privileges or guarantees to make them immune from the influence of the executive branch, besides the absence of independence for the President of the Supreme Audit Institution was directly reflected on the staff's independence (Hameed, Interview, 2015).

Based on the aforementioned data, it was observed that the absence of legal safeguards of the independence the head of the SAI and staff, considered among the main obstacles that has affected on the SAI's functions. Making the head of the Iraqi SAI as part of the government officials is contrary of his jurisdiction to monitor the government sector activities, and to achieve an effective and impartial supervision. Hence, it is necessary to amend the legal mechanisms for selecting the SAI's head and staff without interference from the executive branch.

4.3. Weakness the financial independence of the Iraqi SAI

Although the financial independence requires that the SAI has a power to prepare an independent budget and sent directly to the legislature for approval in the state budget without any interference from the executive branch, however, the Iraqi SAI law did not include confirmation of this principle. According to Article (21) of SAI law, stipulates that the SAI's council has the planning and validating the annual draft budget of the Board according to the State general directions and submitting it to the Ministry of Finance to integrate it with the state's public budget (The Iraqi SAI Law of 2011).

It is understood from the above, that the preparation of SAI's budget is adopting the same mechanism that follow by government institutions. Where, this budget sends to the Ministry of Finance and then to the Council of Ministers (the executive branch), which has the power to amend or delete the financial allocations SAI's. Therefore, it is clear that this legal text contrasts with the principle of the Iraqi constitution in confirming financial independence which must be granted the SAI, as well as the principles of international declarations (e.g. Declaration of Lima and Mexico) of financial independence of the SAIs as have been discussed previously. Moreover, SAI is financially dependent on the ministry of finances, which often causes interference of the executive and undermines the

work of SAI as an independent institution (VanZyl, Ramkumar & De Renzio, 2009).

The lack of adequate funding is one of the constraints that have affected the performance of the supreme audit institution in Iraq. Because the Supreme Audit Institution requires sufficient funds to exercise its important tasks which incumbent upon it in the control of public sector institutions effectively. However, the Iraqi supreme audit institution often did not get what it needed from these money, due it restricted in spending money according to estimate by the Cabinet and ministry of finance from the public budget allocations. In addition, the financial privileges that granted to the SAI's - auditors - not commensurate with the value of the risks which facing them when exercising their functions relating in detect corruption. More than that, the Council of Ministers according to the law of public sector salaries have powers in reduced the amount of salaries and bonuses for all government workers including the SAI's staff, and this is already happened in 2015 (Salman, Interview, 2015).

As evident from the above data that financing the SAI is often relying on what provided by the executive branch through the Ministry of Finance, without being appropriate of actual requirements to this institution. Therefore, the lack of improve the staff experiences and purchase the necessary tools to exercise oversight functions, were one of main problems that has affected the Iraqi SAI tasks.

4.4. Lack the legal guarantees of the Iraqi SAI functional independence

With respect to functional independence of the Iraqi SAI, it is possible to note that Iraqi SAI law, ideally, has included the text on these principles. According to Article (8) of the Iraqi SAI, the entities shall be subject to the SAI jurisdiction are: First - The state institutions and departments, the public sector, or any other authority deals with the public funds in collection, disbursement, planning, funding, exchanging, trading, in-kind production or production of commodities or services. Second - Any other authority whose law or by-law stipulates it should be subject to the Board's audit and control". In addition, Article 13 stipulates that "The SAI has the following powers: First; The right to access all the documents, transactions, orders and decisions related to audit and control, to conduct or supervise an at site stock count, and to obtain, as appropriate, from all the relevant administrative and technical levels all the clarifications, information and answers needed to carry out its mission. Second; Auditing the classified programs and expenditures that are related to the national security, and President of the Board may deputize whom he chooses to act on his behalf to carry out the relevant auditing and reporting. Third; Based on a decision by the Council of Financial

Audit, conducting inspections on the grants, loans, facilities, preferences and investments and making sure they are dedicated to the purposes of provision" (Iraqi SAI law of 2011).

Indeed, the confirmation of Iraqi SAI law on the principles of functional independence has accompanied absence of the necessary guarantees for the application the content of this independence. According to the SAI's reports, there are many problems which recorded as a challenges faced this institution in the imposition of control on public sector institutions and access to documents and records of many government institutions. For example, the reluctance of many government institutions in cooperate with SAI's auditors by provide documents and records relating to certain financial and administrative activities. In addition, the direct intervention by the Council of Ministers in restrict the SAI's functions by many decisions that contrary with the law and instructions (The Iraqi SAI reports, 2005-2014). One of the main reasons that contributed to this situation, is that the SAI does not have any legal means or powers to impose sanctions against uncooperative governmental institutions in order to compel it to provide the documents and information which necessary for exercise the oversight functions. In return, the Iraqi SAI are binding, in all cases, in resorting to the Council of Ministers against the uncooperative governmental institutions that are already part of the executive branch (Hameed, Interview, 2015).

According to Article (12) of the SAI law " ...Second; In case an auditee abstains from making available the records and information necessary for auditing and control, the SAI, within 20 days, shall make a notice to the auditee and the inspector general office in the auditee to present these records and information and to clarify the reasons for abstention. Third; Should the Board find the reasons for abstention unjustifiable, it may inform the council of ministers to carry out an investigation and bind the abstainer to provide the required records and information ". As well as, Article 17 of the SAI law stipulated that "The SAI is bound to advice the council of ministers on any dispute with the entities under its audit and control to take action on the issue" (Iraqi SAI law of 2011). Therefore, there is a contradiction between the provisions of the law that granting the functional independence to the SAI, and the violation of the content of this independence by giving the Council of Ministers a power to resolve disputes between the SAI and governmental institutions which are mainly part of the Council of Ministers. For example, the SAI's reporting have recorded continuously for the years (2006-2015) abstention of many governmental institutions and ministries from providing the SAI many documents relating to contracts, public procurement and administrative activities despite its

involving suspicions of corruption. Although the continuation of these violations of governmental institutions, and inform the Council of Ministers to resolve it, Cabinet has not taken any measures against these institutions (Juma'a, Interview, 2015).

Despite the Iraqi SAI law specifying the duties and powers of the SAI, clearly stipulates that the SAI can require any documents which are relevant to transactions within the scope of SAI's audit, to be sent to the COR, however, the SAI often faces difficulties in timely receipt of documents and information from the executive, thus impeding the SAI's audit efforts. Often, the SAI is forced to report the absence of response from the executive in its audit findings. Therefore, the restrictions on freedom of access to information by the executive branch is considered one of most serious challenges facing the Iraqi SAI's tasks in strengthening the control over public sector institutions in order to fight corruption (al-Jurani, Interview, 2015). Thus, more than ten years the Iraqi SAI has witnessed the late release of audit reports, which should be delivered to the Iraqi parliament within 120 days of the end of every year in order to be discussed. For example, the SAI's reports for the years (2004- 2007) has not been completed and delivered to the COR until 2008, while reports of the years (2008 - 2010) was completed in 2010, and finally reports for the years (2011 - 2014) was completed in 2015 (Faraj, 2012: 39).

On the other hand, the impact on the Iraqi SAI's performance has not only confined to delay of the reports, but also in the preparation and approval the final accounts of the executive branch. Where, from among the problems that faced the SAI is that the executive branch (Ministry of Finance) did not respond to what imposed by constitution of need to provide the final accounts for the end of each year to the SAI for auditing, and sent to the COR for discussion. For example, the final accounts for the years (2003 - 2011) have not sent to the SAI only in 2012. Accordingly, throughout the years (2003 - 2011) any closing of the final accounts has not been discussed, except for the final account report for the year 2004, which was discussed in 2008 (Faraj, 2012: 45).

Therefore, the delay in the provision the SAI's reports to parliament on time and the absence of discussion the governmental final accounts reports, is one of the illegalities that have contributed to reducing the role of the Iraqi SAI in strengthening financial management and accountability of the executive branch about the administrative and financial corruption cases. One of the consequences of such delays is impunity. For example, cases of corruption registered in the SAI's reports may not be taken into consideration when its delay in the issuance, as well

as the discuss the final accounts that reveal the final results for the extent of governmental credibility in spend the public money without wastage or corruption (Salman, Interview, 2015).

In the end, it is clear the absence of functional independence guarantees was among the main factors that have influenced on the Iraqi SAI's performance in strengthen the accountability of the executive branch through the annual reports to discuss the final account of the public sector institutions. The delay in preparation of the annual reports by the Iraqi SAI for many years, contributed the neglect of its discussed by the Integrity and Finance Committees of the Iraqi COR, despite the fact that these reports have recorded many issues of the corruption in the government institutions.

CONCLUSION

Based on the analysis the aforementioned of the legal texts and interviews it can be concluded that the principle of the SAI independence was one of the basic features that characterized the Iraqi legislation, whether in the Constitution of 2005 or the SAI laws after 2003. However, the application of the principles of the Iraqi SAI's independence did not appear in the field of practical application due of many obstacles and problems that accompanied of the Iraqi SAI tasks. Ambiguity of the constitutional and legal texts and the dominance of the executive branch as a result of the actions of the Prime Minister, all these factors had a negative impact on the absence of legal guarantees of the organizational, functional and financial independence of the Iraqi SAI. It is believed that all of these obstacles have contributed to weaken the functions of the SAI and the spread of corruption in Iraq. Therefore, this study suggests, that it is necessary to revise the constitutional and legal provisions relating to the Iraqi SAI independence. The removal of the contradiction between the legal texts, and granting legal guarantees to ensure the real independence of the SAI, will contribute to strengthening the Iraqi SAI performance to impose an effective control on government institutions as well, protection the public funds from corruption.

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